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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,330	01/15/2004	Kurt J. Korkowski	169.12-0614	6390
164 7590 10/09/2008 KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002			EXAMINER KAYRISH, MATTHEW	
			ART UNIT 2627	PAPER NUMBER
			MAIL DATE 10/09/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/758,330

**Applicant(s)**

KORKOWSKI ET AL.

**Examiner**

MATTHEW G. KAYRISH

**Art Unit**

2627

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 17 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Andrea L. Wellington/  
Supervisory Patent Examiner, Art Unit 2627

Continuation of 11, does NOT place the application in condition for allowance because: The applicant contends that the combination of Bauck with Lin is not a valid combination because the shield of Lin is positioned on the top of the actuator arm, and to reposition the guard of Bauck on top of the actuator arm would expose the transducer and the load beam, thereby, negating its very purpose. This is not found persuasive because the combination is made based on that the end cap of Bauck being placed would necessarily encompass any reconstruction needed such that the guard will still perform its basic functions. In this case, a mere relocation of parts to yield a product which will perform exactly the same is understood that a reconstruction may be necessary if it does not severely alter the basic operation of the device. For Bauck, the base portion can have been reconstructed such that the guard was attached to the top of the base plate while protecting the transducer, thus, the reconstruction would not alter the basic performance.

Applicant further contends that Lin does not teach element 165 as a component used on the actuator arm but rather is a portion of the arm itself. Further applicant contends that Lin does not disclose item 165 being cantilevered because of its mechanical attachment to the actuator arm 160. This is not found persuasive because, item 165 of Lin is connected to the actuator arm through the E-block as disclosed in figure 6. Regarding the argument that Lin does not disclose item 165 being cantilevered, this is irrelevant because Bauck discloses this.

Applicant further contends that Bauck is an old disc drive and thus, one of ordinary skill in the art would not have been motivated to use Bauck to protect a modern transducer, this argument is irrelevant. The age of a reference has no bearing on its use in a rejection.

Applicant further contends that one of ordinary skill in the art would have not combined Bauck with Nagahiro because the guards solve different problems, this is not found persuasive because the fact that the applicant recognized another advantage to Nagahiro is not a means for lacking motivation. In this case, the guard of Bauck could have been T-shaped because this would further solve problems related to vibrations. Furthermore, a necessary reconstruction to implement the guard portion of Nagahiro on the actuator arm of Bauck would have been understood considering the operation was not significantly changed.

For these reasons, the final rejection mailed 9/17/2008 remains.